

# Texas Water Development Board

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**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Robert E. Mace, Ph.D., P.G., Deputy Executive Administrator, Water  
Science & Conservation  
Les Trobman, General Counsel

**FROM:** Larry French, P.G., Director, Groundwater Division

**DATE:** June 1, 2016

**SUBJECT:** Briefing and discussion on groundwater management in Texas relating to  
desired future conditions, modeled available groundwater, and desired  
future conditions petitions

## **ACTION REQUESTED**

No action is requested. This is a briefing and discussion item.

## **BACKGROUND**

Groundwater in Texas is owned by landowners (Texas Water Code §36.002) and managed locally by groundwater conservation districts, designated in state law (Texas Water Code §36.0015) as the preferred method of groundwater management. In 2005 the 79<sup>th</sup> Texas Legislature passed House Bill (HB) 1763 that regionalized groundwater availability decisions by directing groundwater conservation districts within the state's 16 groundwater management areas to meet at least annually for joint planning. As part of joint planning, district representatives within a groundwater management area must propose and adopt desired future conditions statements for relevant aquifers in their respective areas. A desired future condition is a quantitative description, adopted in accordance with Texas Water Code §36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times. Desired future conditions may be expressed a number of ways, including water levels, springflows, and storage volumes.

Groundwater conservation districts must review desired future conditions statements at least once per five-year cycle. In 2013 the 83<sup>rd</sup> Texas Legislature adjusted the deadline for districts to propose desired future conditions to May 1, 2016. After district representatives in a groundwater management area meet and vote to propose desired future conditions, each district has a minimum 90 day period to hold a hearing in their district to receive public input. Based on testimony at the hearing and written comments, the district may adjust or modify the proposed desired future condition within their jurisdiction. District representatives then reconvene in their groundwater management area to consider input from the hearings and written comments and

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To provide leadership, information, education, and  
support for planning, financial assistance, and  
outreach for the conservation and responsible  
development of water for Texas

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Jeff Walker, Executive Administrator

vote to adopt the desired future conditions. A vote of two-thirds of district representatives is needed to adopt the desired future conditions. After the district representatives prepare an explanatory report, they submit the report to each district in the groundwater management area. Then each district must adopt the desired future conditions that apply to the district as soon as possible.

District representatives have 60 days to provide the Texas Water Development Board (TWDB) Executive Administrator with a copy of an explanatory report, proof that notice was posted for the joint planning meeting, and a copy of the desired future conditions resolution. TWDB rules (31 Texas Administrative Code §356.32) also require the districts to submit any groundwater availability model files or aquifer assessments that were used in developing the adopted desired future conditions. The explanatory report must:

- identify each desired future condition and provide the policy and technical justifications for each desired future condition;
- document that the nine factors (Texas Water Code §36.108(d)) were considered by the districts and discuss how the adopted desired future conditions impact each factor;
- list other desired future condition options considered, if any, and the reasons why those options were not adopted;
- discuss how the desired future conditions provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence; and
- discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

After the Executive Administrator reviews the submittal and determines that it is administratively complete, the TWDB rules (31 Texas Administrative Code §356.35) provide that staff have 180 days to calculate modeled available groundwater values, which is the volume of groundwater that could be withdrawn to achieve the desired future conditions. Groundwater conservation districts consider modeled available groundwater and other factors when permitting wells. At this time regional water planning groups must use modeled available groundwater estimates for groundwater availability in their regions and may not recommend water management strategy supply volumes that result in exceeding the modeled available groundwater volumes.

An affected person (such as a landowner, holder of a groundwater permit, or a groundwater conservation district) may appeal the reasonableness of a desired future condition by filing a petition with a groundwater conservation district. The district must provide a copy of the petition to the Executive Administrator and also contract with the State Office of Administrative Hearings to conduct a contested case hearing. The Executive Administrator conducts an administrative review of the petition to determine whether the desired future condition established by the district meets the requirements of Texas Water Code §36.108(d) and conducts a scientific and technical analysis of the desired future condition. The district may request the TWDB to assist in mediating the issues raised in the petition. If the issues cannot be resolved, the

State Office of Administrative Hearings is to proceed with the hearing. The results of the analysis and study are submitted to State Office of Administrative Hearings no later than 120 days after receiving the petition from the district. TWDB staff may also be called on as expert witnesses during the hearing.

After the administrative law judge issues a proposal for decision, the district must issue a final order stating the district's decision on the contested matter. The district may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify the judge's order. In this case, the district must issue a report with the policy, scientific, and technical justifications of its decision. However, a final order by the groundwater conservation district may be appealed to a district court with jurisdiction over any part of the territory of the district that issued the order. A case before the district court will be decided under the substantial evidence standard of review. If the district court finds that the desired future condition is unreasonable, then representatives of the districts in the groundwater management area must reconvene for the purpose of revising the desired future condition.

### **KEY ISSUES**

Districts in all groundwater management areas have met the statutory requirement to propose desired future conditions by May 1, 2016. The following table summarizes the status of desired future conditions that are proposed or formally adopted by districts in groundwater management areas as of June 1, 2016.

**Status of Joint Planning Activities (current as of June 1, 2016)**

<b>Groundwater Management Area</b>	<b>Major or Minor Aquifer(s)</b>	<b>Proposed Desired Future Conditions</b>	<b>Adopted Desired Future Conditions</b>	<b>Desired Future Condition and Explanatory Report due to the Executive Administrator</b>	<b>Desired Future Condition and Explanatory Report Received by Executive Administrator</b>
1	Ogallala	4/20/2016			
2	Ogallala	4/19/2016			
3	Pecos Valley Alluvium	4/26/2016			
4	Igneous, Bolsons	3/31/2016			
6	Seymour	4/28/2016			
7	Edwards-Trinity (Plateau)	4/21/2016			
8	Trinity	4/1/2016			
9	Trinity (Hill Country)	9/28/2015	4/18/2016	6/17/2016	4/26/2016
10	Edwards (Balcones Fault Zone)	3/14/2016			
11	Northern Carrizo-Wilcox	4/28/2016			
12	Central Carrizo-Wilcox	4/15/2016			
13	Southern Carrizo-Wilcox	4/27/2016			

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14	Northern Gulf Coast	6/24/2015	4/29/2016	6/28/2016	5/6/2016
15	Central Gulf Coast	1/14/2016	4/29/2016	6/28/2016	
16	Southern Gulf Coast	10/28/2015			

District representatives in three groundwater management areas representing the Trinity Aquifer of the Texas Hill Country, the Northern Gulf Coast Aquifer System, and the Central Gulf Coast Aquifer System have adopted desired future conditions; two have submitted formal packages including an explanatory report to the Executive Administrator. Those submittals are currently being reviewed by the Executive Administrator for administrative completeness. If the submittals are not administratively complete, the Executive Administrator will provide a notice of deficiencies. The districts have 90 days to submit an updated package to the Executive Administrator that addresses the deficiencies. After the determination of administrative completeness and notification to the districts, the Executive Administrator's staff has 180 days to calculate the modeled available groundwater based on the adopted desired future conditions.

As of May 1, 2016, district representatives have proposed or adopted desired future conditions for nearly all or portions of the 30 major and minor aquifers. A desired future condition has not been established for the Hueco Mesilla Bolsons Aquifer in Groundwater Management Area 5 (the El Paso area) because there is no groundwater conservation district in that area. Desired future conditions have also been proposed for some subdivisions of major aquifers, as well as local aquifers that are not recognized major or minor aquifers. Nearly 500 specific desired future conditions statements have been proposed or adopted for the state's aquifers, covering subdivisions of aquifers and segments of aquifers ("aquifer splits") that occur in different groundwater conservation districts or counties.

The Executive Administrator will provide final modeled available groundwater reports to the applicable groundwater conservation districts and regional water planning groups. These reports will be issued beginning late in 2016 and extending through much of 2017.

As of this date, no petitions have been filed against adopted desired future conditions. The earliest opportunity for any petition to be filed with a district is after a district has formally adopted the applicable desired future condition(s) in its jurisdiction. The districts in the three groundwater management areas that have voted to adopt desired future conditions have yet (as of June 1) to individually adopt their desired future conditions. Once those actions are taken, an affected person has 120 days to prepare and file a petition with the district. Staff will monitor any developments at the district level that could result in petition activity and involvement with the agency.